

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Assistant Administrator may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in § 208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Joint Management Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activa-

tion. The provisions of § 208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered “on-duty” and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with § 208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency’s request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold..	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members..	For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members..	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for every hour over 40.
(vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,	For each seven-day period during the Affiliated Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table,	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System

Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in § 208.40 (c) of this subpart, DHS will reimburse the